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POLITICAL CRIMES DEFINED

CONTINENTAL Europe is in the midst of revolutions. The immediate antecedents are such as to suggest the probable accompaniment of more widespread and perhaps even more intense passions of various sort, than have ever before been brought into being with a revolution. This in turn suggests the likelihood that there will follow more political plots and counter-revolutions than is usual in such cases. From such causes it is highly probable that the juridical meaning of the statutory words "an offense of a political character" will be a matter of frequent controversy, as successive crops of exiles claim the right of asylum in America. The character of the present revolutions is such that, more than usual the exiles will be from the more fortunate and educated class which has become disprivileged by the democratizing process. From such considerations and others, it now becomes unusually important for us to do a little dispassionate thinking upon this subject before our own passions become still more involved. If we fail to secure a definition that really defines political offenses, then our own judiciary may be compelled to flounder in the meshes of its own lawless passions, and make the judicial action dependent upon each judge's whim, caprice, or partisan passions.

PRESENT JURIDICAL CHAOS.

In connection with the British enactment of 1870 concerning extradition, the Attorney General is reported to have said in Parliament that they had found it more difficult to define a political offense than to define the Ulster Convention, and that they had finally given up the attempt and had left the matter to the courts. Unfortunately there is no conspicuous reason to believe that our judges are endowed with any greater intelligence than the Attorney General, the British Parliament, or the American Congress.

Judges whose desires and mental processes are functioning at relatively immature evolutionary levels will have a corresponding vanity. "Judicial dignity" makes it very difficult for such judges to admit frankly the lack of omniscience. Accordingly such judges tend to make a virtue of their inefficiency by proclaiming the expediency of their ignorance and of the despotic power which they can assume as the result of uncertain statutes. This attitude is illustrated by Mr. Justice Denham, who said: "I do not think it is necessary *or desirable* that we should attempt to put into language, in the shape of an exhaustive definition, exactly the whole state of

things, or every state of things which might bring a particular case within the description of an offense of a political character."¹ Such uncertainty in the law is very gratifying to an infantile lust for autocratic powers, sometimes craved even by judges when they are dominated by a Kaiserian temperament. Thus I discredit the statement that it is undesirable that legal rights should be a matter of precise definition, and that it is undesirable that judges be restrained by known and certain rules of law.

Under the old Russia, the Tzar's laws frankly defined in a separate code with increased severity of penalty all those offenses that were of a political character. Some persons are temperamentally so constituted that they cannot look full in the face those facts which tend to discredit our claim of superiority over the regime of the Tzar. Such will tend to create legal fictions to support of delusion of national grandeur. In consequence we read that: "Under our laws there can be no crime of a political character" short of an overt act constituting treason. That is the fiction. The fact is that while our criteria of crime do not now include such crass confessions of class distinctions as formerly, all the economic offences which were punished as lesser treasons are here and now suppressed by new methods under new description, new names and new pretenses,² which partially conceal the old purposes. Much could be said to prove that many among us are quite as fearful of further democratization as were the Tzar and the Kaiser.

Judge Morrow in the *Ezeta* case (*supra*) tells us that: "What constitutes an offense of a political character has not yet been determined by judicial authority." It is in the same decision that he tells us, that in American law there can be no crime of a political character. If it were (cite) not that the liberty of every worthwhile citizen may be involved, one might forget the reverence expected by the judiciary and take a hearty laugh at the unconscious humour of a judge who tells us that he does not know the legal criteria of political offenses and yet in his confessed ignorance informs us that under American law no such offense can exist.

Moore³ cites Rolin with approval to the following effect: "Various definitions have been given of what constitutes a political offense. Such definitions, however, are of little practical value since

¹ *In re Castioni* (1891), 1 Q. B. 149; *In re Ezeta*, 62 Fed. Rep. 972, 998.

² For an eighteenth century British view see: *Constitutional Free Speech Defined and Defended*, p. 175. For similar laws under the late Tzar see: *The case of Jan Jean Pouren*, pp. 101-4. Then compare: *Free Speech for Radicals*, and: *Final Report of U. S. Commission on Industrial Relations*, 1915, especially p. 150. Also the Proceedings before that Commission.

³ *Moore on Extradition*, v. I, p. 305.

the question whether a particular act comes within that category, is preeminently circumstantial." This view apparently is quite generally accepted by courts. So long as this is true there is little that resembles a "law" to restrain the whim, caprice, or passions of sympathy and aversion on the part of our judges. When we are content that the differential essence of criminality shall be determined by circumstances wholly objective to the criminal, which circumstances are not previously defined nor even definable, then we are quite unconsciously classifying ourselves as still groping in the murky mists of the pre-scientific and despotic past, when every judge was a law unto himself. In the matter of political offenses we are unfortunately and admittedly floundering in just such a sea of uncertainty. Because I believe this condition quite unnecessary therefore this essay is being written.

THE OLD AND NEW CRIMINOLOGY.

According to the older unenlightened practice, all "criminals" were classified according to the physical facts of their conduct. According to the newer criminology which is fast coming into being, the physical facts of the "crime" are considered as merely *some* of the indications of the quality of the psychologic imperative which conditioned the characteristics of the "criminal" conduct. Those who are not already familiar with these newer aspects of criminology are urged to study, among other material, the fine work which Dr. Bernard Glueck has been doing at the psychiatric clinic of Sing Sing prison.⁴

This newer viewpoint of psychology and its data enable us to classify the accused persons quite irrespective of their "crime." From this viewpoint we classify the offense and the offender not so much by what was done as by the psychologic *how* and the psychologic *why* of his conduct. At its best we consider even the sub-conscious factors of causation which were co-ordinated with the obvious stimulus to produce the conduct complained of.

It should be understood that this quest for the character and psychophysical causation of the offender's psychologic imperative signifies very much more than the conscious motive, as that is understood in the old conception of a "criminal intent." By this last we have usually meant only something that we reasoned into the

⁴ Recent progress in determining the nature of crime and the character of criminals. No. 116 Reprints of reports and addresses of the National Conference of Social Work, 1917. Meeting at Pittsburgh. Also: The causes of delinquency. First report of sub-committee. Same publisher. See also: Papers by Dr. Glueck, published in *Mental Hygiene*.

consciousness of the accused. In the best and most comprehensive sense our judgment will now include also an understanding of a long range (in time and space) of the physical and psychic experiences of the past, all of which were formative of the present character and contributory determinants for the special impulsive states which produced the "criminal" act. Thus we may apply, in addition to neurologic intelligence, and psychotechnics, also a genetic and evolutionary psychology, which present the latest subjects of scientific research. These latter sciences are still in the making, and so near to their beginning, that their achievements have not yet illumined the dark recesses of legislative halls or of judicial intellects.

Instead of pressing this psychologic viewpoint to the utmost, as applied to political offenses, I wish to remain within the boundaries of a more commonplace intelligence. In this paper I will therefore, limit myself by the desire that the political offenders shall be judged, not by the physical quality and physical circumstances of their acts, but by the psychologic qualities and circumstances of the accused's inner compulsion, only in so far as that was a conscious part of his "criminal" act. From the highest level of understanding human conduct, we should include also his contributory subconscious impulses. However, for the present I limit myself to the task of laying a predominant stress upon the conscious motives of the offender, even though that may only be the intellectualization of one aspect of an emotional conflict, which he himself does not adequately understand any more than the average judge understands it.

PSYCHOLOGIC IMPULSE V. CRIMINAL INTENT.

At the outset I must make it plain that by motive we do not now mean the old legalistic and moralistic preconceptions which are always so very logically and so easily imputed to any one accused of "crime". On our part the finding of a "criminal intent" is usually the mere formulation of some habitual, blind or relatively immature impulse or immature intellectual habit. Only those who can get away from the relatively blind feeling-classifications and from our instinctive moralistic judgments, are enabled to go in quest of psychologic data, objective to the judge and outside the immediate physical facts of the crime, for the classification and definition of political offenders. Under the old method for determining intent, the judge (or jury) simply used logical processes for reading into the mind of the accused a feeling predisposition (a prejudice) on the part of his triers. If this procedure were ever entirely con-

scious it would be expressed something like this: "I *feel* a great aversion to this act or to its consequences. Therefore, I know it to be very evil and *feel strongly* that this crime must not go unavenged. Suspicious circumstances in evidence point only to the accused. Therefore, the necessity of experience requires that the accused be found guilty. Therefore, also he must have intended what I feel to be the necessary evil consequences of such an act. I *feel* this logical necessity so strongly that the accused cannot be permitted to successfully deny it, nor to claim any mixture of countervailing motive. Therefore, the accused is conclusively proven to have been actuated by a 'criminal intent,' and is guilty according to any degree of criminality which is implied in the worst aspect of this reprehensible 'criminal intent' so logically imputed to him". Thus by processes which seem extremely logical we read into the mind of the accused what is really only our own blind instinctive feeling-predisposition, the prejudice of our own fear-psychology, our own emotional conflicts, very often working below the surface of consciousness. Where the criteria of political offenses are supposed to rest vaguely in the circumstances of the accused's conduct, there is absolutely no protection whatever against caprice or prejudice finding a supremely logical justification for convicting almost any accused person.

It is very different if our mental processes and our desire to *understand the accused* are both functioning on a higher evolutionary level. To achieve such an understanding may require some changes in the rules of evidence. Then instead of reading our predispositions into the accused we attempt to get out of the accused some understanding of the quality of his psychologic imperative. This is to be discovered by observation and an inductive study of the motive as a fact of psychology, especially in its relation to *his* concept of, or feeling for social well-being. Now we ignore the question as to whether or not the accused acted in harmony with *our* conception of the social progress of the future, or of the best means to promote it. As a fact to be understood through greater psychologic insight and more careful psychologic observation, we might earnestly seek to discover how far the accused was actually prompted by a social impulse for bettering human conditions, or for helping any group of humans to a better social adjustment, or to the further democratization of welfare. Now we strive earnestly to give the accused person a most sympathetic understanding, not caring whether we approve either his objects or his means for their attainment. We insist upon discovering as a fact, by dispassionate observation, the objective factors of causation, and the genesis and

nature of the subjective aspect of the actuating impulse. Our discoveries in this direction will be then eagerly applied to check our predispositions. For this purpose we are compelled to take into account, not only the immediate effect of the accused conduct, but also the remoter social effects that it was designed to promote. Likewise we will now concede that his social group and its interests may be sociologically just as important as that to which we belong or to which he may be hostile. Progress always proceeds by the re-valuation of conventional conceptions of social values.

Now we may inquire if the offending act, *in the mind of the accused* was designed for the sole end of benefiting or avenging himself, or was it his conscious purpose or even his subconscious urge to indulge in the prohibited conduct as a means to some larger and more social ends. His motive is still selfish, of course, but in his feelings at least, the self then includes all of some group of reformers or supposed victims of existing conditions, tolerated or established by the State. It is in this sense that we now study motive as a psychologic fact, not as a logical imputation. I repeat once more that this psychologic fact is very different from the logical projection or imputation to the accused, of our own emotional moralistic preconceptions, or aversions, such as may be, in our minds or in our subconscious feelings associated with his act. It is also different from a mere exaction of conformity to legalized formulæ for maintaining a static concept of social well-being or of conformity to our own conscious or unconscious class sympathies or interests.

CRITERIA OF POLITICAL CRIME.

We have now formulated briefly this psychologic viewpoint in criminology, and have sought to emphasize the difference between the motive for a "criminal" act, considered as a psychologic fact to be discovered by psychologic inquiry and observation, as contrasted with the older concept of a "criminal intent" as something which can be logically imputed to one accused. It is the existence of such a social motive, to be established as a psychologic fact that I propose to make the criteria of "political crime". We will next proceed to illustrate this viewpoint by its application to some debatable aspects of "political crime" when that is conditioned upon its physical circumstances. Thus we will see how this psychologic viewpoint, and its insistence upon inquiry about a social impulse, solves all the existing problems of uncertainty in the legal test of political offenders. From here on this discussion is written also from the viewpoint that ideas are nearer to being impotent than to omnipotence;

that thoughts are not things. Abstractly most people will probably affirm this. Concretely, and quite unconsciously our behaviour is otherwise. The explanation is that reason is only a function or tool of desire. Being wholly ignorant of the psycho-determining function of the autonomic system⁵ and being very much aware of only its end product in conscious reasoning, we are compelled, by that very ignorance, to believe that it was our reason which determined our act, when in fact our impulsive desires determined both our reasoning and our conduct. I cannot now stop to justify this proposition, but for some readers this information will increase their understanding of what I mean when I say that a judge's *ex post facto* reasons only justify his prior desires in relation to the problem before him. These reasons never determine the predispositions, and seldom modify them.

HYPOTHETICAL CASE AND CHANGED CONDITIONS.

Let us assume that a Russian Royalist and a German Bolshevik are each concerned in a conspiracy designed to overthrow the present existing governments of their respective countries. No overt act of physical violence has occurred, let us assume. But these conspirators were hoping that their respective efforts will some day accumulate an adequate force to reestablish the Tzar in Russia and induct the supremacy of the Bolsheviks in Germany.

It is conceivable that two such widely divergent programmes would produce very different emotions and very intense ones in some of our judges. Heretofore, the exiles have been usually the victims of governments which had developed to less political liberty than our own, and sympathy usually was on the side of the exile. With the collapse of many royal establishments possibly our sympathies may become somewhat hostile to the oncoming groups of royalist exiles. All persons are not qualified to look with equal calm on German counter-revolutionists seeking to reestablish Kaiser Wilhelm. In some quarters there would be even more disturbing emotions if confronted with a German Bolshevik who sought to produce proletarian uprising with the view to democratizing useful labor and of welfare in Germany, instead of mere political forms. It is these situations with their irritating novelty that emphasize the importance of a clearer concept as to the criteria of political offences.

Behind the past wordy quarrel over mere political constitutions

⁵ Kempf: "Autonomic Function and Personality." For another point of view see: *Psychologic Study of Judicial Opinion*; Calif. Law Review, v. 6, pp. 89-113; Jan. 1918. See also: reprint of same. *Matricide and Mariolatry*, *Medico-Legal Jour.*, v. 36, pp. 4-10.

and legal forms there always were more substantial bones of contention. One of these was for more intellectual liberty and the other for greater equality of economic welfare. Under the late Tzar, an industrial strike was a form of lesser treason and a political offence both in name and in fact. This was formerly true also in England. There, to go from town to town seeking generally "to enhance the salaries of laborers, these are by construction of law a levying of war, because the design is general."⁶ Even some judges can sympathize with opposition to that state of things and could consider acts committed in pursuance of that opposition as a political offense, especially when the occurrence was European and before the great war. Doubtless some judges could also give very sympathetic consideration to a royalist counter-revolution which sought to reestablish the old Russian regime.

Probably most of us lawyers would find it difficult to give a sympathetic understanding to a German Bolshevik who conspired to establish in Germany a government for the democratization of labor and of welfare and which would penalize all exploitation of laborers. Most of us give enthusiastic support for the general achievement of our own kind of democratic political forms. However, our feelings are not yet generally attuned to the calm acceptance of the democratization of labor and welfare, even if peaceably accomplished by our own accustomed political methods. Is it intelligent to assume that unaided, all of us can remain in philosophic calm, when confronted with a live Bolshevik who sought to use revolutionary methods to force the democratization of labor and welfare upon the former German aristocrats and their sympathizers? And yet according to legal theory the Bolshevik should receive the same consideration as a political refugee that is given to a Russian Monarchist. To do justice and check our instinctive impulses so as to judge all by the same legal standard, we again find ourselves in need of some definition for determining what are "offenses of a political character." This standard should be such as to be exact and uniform in its application to both Bolshevik revolutionist and Monarchist revolutionists, as well as the more conventional political reformers. The existence of a conscious motive honestly believed and actually acted upon, to the effect that their respective revolutionary attempts if successful would on the whole promote the social welfare or supply a more intelligently conceived "justice" for some social group or unit, supplies such a criteria of what we may mean by a political offender.

⁶ Whitelocke *Bulstrode: Charges to the Grand Jury and other juries* (1718), p. 18. See also: *Statute of Laborers in Nelson & Cromwell—Eng. Liberties.*

CRIMES INCIDENTAL TO THE POLITICAL.

It may be objected that if we make social motive the criteria of a political offense that then we are extending the right of asylum beyond the direct and immediate acts of revolution to cover accidental and incidental "crimes" only remotely or secondarily related to the accomplishment of a political revolution.

This is true but it is no novelty. Such an extension to the incidental offences has already been made. Mr. Sherman, secretary of State in a letter dated Dec. 17, 1897, addressed to Mr. Romero, Mexican Minister, said: "It follows, moreover, from the very tenor of most of the extradition treaties that when they exclude political offenses, *it is precisely connected, complex, or relative-political offenses which are meant*, the non-extradition for absolute political offenses being considered as implied."⁷

President McKinley, in his Annual Message to the Congress, Dec. 5, 1898, put it thus: "The Mexican contention was that the exception only related to *purely political offenses*, and that as Guerra's acts were admixed with the common crimes of murder, arson, kidnapping and robbery, the option of non-delivery became void, *a position which this government was unable to admit*, in view of the received international doctrine and practice in the matter."⁸

In a leading case an American court has approved the same view quoting from the French authority Calvo when he says: "The exemption even extends to acts connected with political crimes or offenses, and it is enough, as says Mr. Faustin Helie that *a common crime be connected with a political act*, that it be the *outcome of or be in execution of such*, to be covered by the privilege which protects the latter."⁹

However, so long as this incidental relation of a "common crime" to a "political crime" is allowed to be determined by viewing only the physical acts of the parties we are always at sea for a standard of judgment. Under such circumstances we all tend unconsciously to read into the situation our own emotional attitudes and no rule of law exists to hinder the process, or to help our conscious desire to check our predispositions. The situation is helped somewhat if we look for the existence of social motive in the person who is accused of a "common crime" and by the existence of such a social motive give to his act the quality of "an offense of a political char-

⁷ Moore's Digest of International Law, v. 4, p. 344.

⁸ Moore's Digest of International Law, v. 4, pp. 349-350. See also: International American Conference, v. 2, p. 615.

⁹ Calvo Droit Int. (3 me ed.) p. 413, sec. 1262. Approved in: *In re Esetta*—62 Fed. Rep. 999. Here other authorities are also reviewed at length.

acter". Now we have a very precise issue of fact to decide, and the operation of prejudices will then be limited to some possible distorted weighing of the evidence. Then the conscious checking of our predispositions is relatively easy because now our standard is at least theoretically certain, and our range of inquiry more limited.

IS A MILITARY COMMISSION NECESSARY?

Now we come to the application of our viewpoint to some concrete issues that have been actually raised. During our Civil War privateers pirated upon the high seas, in aid of the Confederacy. It was claimed and held (if my memory serves me) that an act of piracy could not be a political offense unless those responsible therefor had been authorized to do what they did by the constituted authorities of the Confederacy. Here we see an adjudication which in effect says that there cannot be such a person as a political offender unless an organized government has been established by the rebels and that government has by writing authorized the act complained of. Also, here there is no allowance for crimes committed incidental to a revolution, though actually in furtherance of it.

Such a decision is manifestly against the weight of authority. Such a standard of judging political offenses could be satisfactory only to a judge having a strong bias against those particular offenders before the court or all political offenders and who is therefore eager to accept any kind of reasoning that seemed to justify his personal end. A different method and result would have obtained if the law concerning political offenders had required the judge to search after the impulsive quality of the motive instead of the immediate objectives sought to be attained by the accused. Then the existence of such a commission would be strong circumstantial evidence but not conclusive. Neither would the absence of such a commission be conclusive. On the contrary, the judge would go into all the facts of the man's activities to discover the psychologic *why* and the remote beneficiaries for whom the act of piracy was committed. The existence or non-existence of a social impulse behind the act would then be decisive, not the physical facts of his act or its attendant outward painful circumstances.

MUST "STATE OF WAR" EXIST?

Very much like the above decision in relation to Confederate privateering, are those cases which say that no immunity as for a political offender can be recognized "when a state of recognized war or open revolt has not existed." According to this standard the Boston Tea Party and John Brown's anti-slavery activities were just ordinary "criminal acts". In short there is no "political offense"

until a revolution has obtained such success and headway as to secure international recognition as a "state of recognized war." Of course the general trend of judicial conduct is against such a conclusion. But such a narrow rule is again made possible by the want of legal criteria of political offenders, combined in the judge with an aversion to that democratization which seldom comes otherwise than by physical revolution. Such arbitrariness is impossible if judges could be compelled to make inquiry for a social impulse as the motive for the act, instead of determining the qualities of political offenders from the physical facts of conduct.

THE TERRORISTS.

There are variants of the above contention nearly as restrictive as the last one. Thus it is claimed that "there must in such cases be two parties in the State each striving to impose its own government upon the other."¹⁰ In a Russian case it was argued¹¹ that it was indispensable that the refugee must have been a member of a large and organized body of men; that this body must have had uniforms; that they must have attacked the military and stolen only military supplies, etc., etc.

This contention was not upheld. Again we say that the acceptance of such an argument and distinction, only manifests the desire or willingness that the right of asylum should be all but abolished. As revolution can never come into being full-fledged, every revolution has its beginning in the acts of a few individuals. Those who initiate a revolution, or make a futile attempt to do so, or even single-handed hope to destroy what they consider despotism, by making it unsafe for the tyrant, are just as much political offenders as those who succeed. Only those who fail are apt to need the "right of asylum". The compulsory inquiry for the discovery of a social motive behind the act or even a solitary individual offender, will make it more difficult for feudal minded judges to explain away any part of the right of asylum.

PUNISHMENT AS DETERRANT FOR "CRIME".

Most of our criminal codes are still based upon the theory of punishment, as revenge and as a deterrant. Judges who have not outgrown the medieval attitude often justify severe penalties on "criminals" not because the particular act merits it, but on the theory that the man before the court can and should be made to suffer dispro-

¹⁰ *In re Munier* (1894), 2 Q. B. 415; 71 Law Times N. S. 403; 18 Cox C. C. 15.

¹¹ On the Authority of: *Kennett v. Chambers*, 14 Howard 34.

portionately and vicariously as a deterrent in others. Of course, such judges draw on their inner consciousness for arguments. A reference to prison statistics as to recidivists, or an acquaintance with the history of revolutionary activities in Germany and Russia during the last half century might disillusion such judges. Therefore, they avoid such history and such available information about the actual influence of their sentences. They desire sadistic impulses justified, not discredited or checked. While revolutionists often vaunt themselves upon their intellectual superiority they are in fact just as ignorant as our judges. So through like fallacious reasoning the terrorists of Russia came into being. They attempted to avenge upon the responsible officials every "legalized wrong" done to a revolutionist, on account of his revolutionary activity. They too, thought to deter "legalized crime" on the part of the authorities, by having revolutionists inflict the death penalty upon responsible official miscreants. They reasoned as do our judges, that tyranny and crime can be minimized by making them unsafe, that is, by terrorizing the potential tyrant and potential official "criminal". But it never works that way. The savagery of the judges "justified" terrorism. Terrorism "justified" the savagery of the judges. So we go round and round the circle. German junker theories of Schrecklichkeit embodied the same theory in its application to war. They too thought to deter opposition by terrorism. They too failed. The present Russian chaos is the product of such conduct, "justified" by the same theories. How could Bolsheviks be expected to act different when all the rest of the world insists that terrorism is the way to induce conformity? If similar chaos comes in Germany, as seems quite possible at this writing, the same forces will operate and the same theories will be invoked in justification. Always this conduct is very logically justified by such theories about the deterrent influence of Schrecklichkeit. German Schrecklichkeit and Russian terrorism are of the same quality of ignorance as that manifested by our criminal codes and especially by judges who find "good reasons" for extravagantly punitive penalties and for denying the right of asylum to any socially motivated foreign offenders. Human nature was not constructed according to either German logic or judicial logic. To understand human nature we must forget logic and make an objective study of the behaviour of human impulses.

TERRORISTS AND ANARCHISTS.

The genetic psychologist sees in all these special pleas to justify vengeance, the operation of an emotional conflict. That such theories for vengeful cruelty find equally vigorous growth at both ends

of the conventional social scale only evidences the likeness of the impulses and emotional disturbances that are at work in both classes. In the psychology of the conflict we find subjective element of unity between love and hate, between Russian terrorist and American feudal minded judge, between anarch and legalolatrism. A distinguished psychologist has said: "The most patent cause of revolution in the society of man is affective or autonomic repression, usually due to usurpation and waste of economic necessities and sex."¹²

Now let us see the occasional working out of this emotional aversion when we come to applying the protecting doctrine of political refugees to terrorist-anarchists and other terrorists. There are of course, many varieties of anarchists including the extreme non-resistant type of Tolstoy and of Paul Blaudin Mnasson.¹³

Norman Angel, George Ticknor Curtis and Judge Colley all concur that "dynamite criminals" should be surrendered "not as political offenders but as assassins whom no civilized government will protect." That is almost the same language in which dissenters from the established religion were once denounced. Those whose fear psychology is functioning near the morbid level always tend toward this kind of absolutism. They therefore tend to intellectualize the fear of a destruction of their own ideals, as akin to the dethronement of God or the destruction of all human values. Again applying the doctrine of the subjective unity of love and hate we come to the conclusion that temperamentally (psychologically) the judicial terrorist and the outlawed political terrorist are functioning on the same evolutionary level of desire and of ignorance of human nature. Probably both are unconsciously working out the emotional conflict (sado-masochism) and inventing the same *ex-post facto* and *a priori* justification.

Those who are free from such conflicts do not get excited even when an anarchist applies to despots our legalized theory of personal "moral responsibility" for disapproved conduct. The royalist who recently shot Eisner of the German Cabinet, the socialists who recently shot Liebknecht and Luxemburg in Germany, the anarchist or Terrorist who killed Count Stolypen should be tried by the same standard. This cannot be if the criteria of "political offenders" is made to depend upon the kind of weapon used or the sort of organization with which its user would supplant existing institutions. Only judicial lawlessness will result if we protect an assassin who

¹² Kempf, Autonomic Function and personality, 13. For the unity of love and hate see: Matricide and Mariolatry. Medico-Legal Jour. 36-40.

¹³ See Anarchism at the Lord's Farm. The record of a social experiment written by me, and soon to be published.

seeks to avenge or reestablish the rule by divine right, and refuse protection to the anarchists who erroneously think so well of humanity that they believe that it functions most efficiently when organized under voluntary co-operation.

The governmental autocrat believes that humanity can be efficiently organized only by imposing the superior wisdom of a propertied and privileged class. These autocrats accordingly use legalized violence and often unlegalized violence to compel cooperation in the maintenance of rule by divine right. Those who are trained in political democracy believe that more intelligent economic justice can be obtained through the abolition of hereditary political privileges and prerogatives and by the establishment of a compulsory cooperation for the maintenance of political democracy. Often our own police and sometimes our own courts, sanction unlegalized violence in the promotion of this end. The anarchist believes that political democracy has failed to democratize labor, education and welfare. Therefore the anarchist seeks to abolish all existing political forms in order to secure the substance instead of the machinery of democracy which alone justifies in his mind the existence of any rule, so these seek to accomplish their end by means of a wholly voluntary cooperation. A few of the anarchists believe they can promote the destruction of "obsolete" political forms by means of violence directed against the "tyrant" and they justify themselves by the use of judicial logic founded upon psychologic ignorance. Of course, humans have not yet reached perfect God-hood and therefore perhaps the Anarchist scheme may be as much of a failure as was the rule by divine right. It has only the advantage of not having been observed in actual general operation.

Our past tendency has been to say that an act of violence to promote government by divine right or political democracy is a political offense, but that an act of violence to promote the democratization of labor education and welfare by the abolition of all political institutions and in favor of a voluntary cooperation, cannot be a political offense under any circumstances. According to some fear-psychology functioning in high places, the anarchist who would destroy all coercive political government by the use of violence is not engaged in political offense. So contradictory do our intellects work under the influence of our emotional conflicts when unrestrained by any devotion to a general criteria of political offenses. In the objective factors of the conduct of such persons we can always find "conclusive reasons" for our own passionate aversions.

NEW STANDARD APPLIED.

All this has a different appearance when we approach our problem from the viewpoint of a search for a socialized impulsive motive. Now nothing is to be declared *per se* a political offense or not, merely because we approve or disapprove the offenders particular weapon of violence (dynamite), the quality or number of his associates, the intensity of their coherence, the character of their clothes (uniforms) or their theories for improving economic justice or intellectual liberty. Now a man is not to be prejudged as having a socialized political motive, nor of being incapable of a political offense merely because he is a divine-righter. Neither is he to be prejudged as being *per se*, and necessarily either capable or incapable of a purely personal revenge void of social impulse, merely because he is an Anarchist or Bolshevik. Now we judge of the existence of a social impulse as an inducement to the violence complained of wholly upon objective psychologic observation and evidence, judging the man's life and motive as a whole and in process of evolution, and not by the exclusive use of the physical factors and incidents of his conduct; nor yet by the mere logical imputation of an intent or an immediate objective aim, to aid which the physical fact can be construed according to any predisposition that may prevail.

If ours is to be a government of laws and not of men then Tzarite-terrorist and Anarch-terrorist, Kiserite-revolutionist and Bolshevik-revolutionist, Irish nationalist and Indian revolutionist, Militant suffragette and American pacifists and conscientious objector must have all their "crimes" judged as to their political character by the same legal standard. This is not done when the statute leaves a judge free to indulge his personal whim in choosing such physical factors of the "crime" as suit even his unconscious predisposition to classify the "crime" as political or not. A large measure of "law" is injected into the situation if the court is required to make inquiry as to the existence of a social impulse for the "crime" and required to classify the offense accordingly. Have we become sufficiently removed from the love of judicial lawlessness to make this possible—now—as applied to "political offenders?"

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